

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONLAN ABU and AMANDA
RHOADES MOORE,

Plaintiffs,

v.

Case No.: 21-12925

Nancy G. Edmunds
United States District Judge

ALLY FINANCIAL INC.,
Defendant.
_____ /

Curtis Ivy, Jr.
United States Magistrate Judge

ORDER DENYING MOTION TO COMPEL (ECF No. 17)

Defendant Ally Financial, Inc., moved to compel responses to interrogatories and requests for documents on September 1, 2022. (ECF No. 17). Defendant argued that it served its requests on May 9, 2022. After some attempts to communicate with Plaintiffs' counsel, counsel conveyed responses would be forthcoming by August 26, 2022. As of the date of Defendant's motion, Plaintiffs had not provided responses.

In their response brief, Plaintiffs argued the motion should be denied as moot because they have served "full and complete" responses to the requests. (ECF No. 19, PageID.175).

In its reply, Defendant acknowledges that Plaintiffs provided responses, but now argues that the responses are insufficient and waived because the objections are untimely. (ECF No. 20). The argument that the responses are insufficient will

not be heard here. This issue was (necessarily) raised for the first time in the reply, leaving no opportunity for Plaintiffs to respond in writing. Typically, issues raised for the first time in a reply brief are waived. *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008). For this reason, Defendant's motion is **DENIED WITHOUT PREJUDICE** to its right to file a renewed motion to compel challenging the responses, specifically.

The motion is **DENIED** in relation to deeming the objections waived because the responses were provided months after they were due. Defendant is correct that the failure to timely object renders any objection waived, Fed. R. Civ. P. 33(b)(4), but since the parties communicated before the motion in which Plaintiffs indicated their intention to respond, the Court is not inclined to consider objections waived. That said, Defendant may raise this issue in a renewed motion to compel if it so desires.

Given that the discovery deadline has passed, a renewed motion, if any, must be filed with some haste.

IT IS SO ORDERED.

The parties here may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R.

Civ. P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in effect unless it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date:

s/Curtis Ivy, Jr.
Curtis Ivy, Jr.
United States Magistrate Judge